IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4346 of 2007

M/S. SATISH & CO.
V/S
A.D.J. ,(F.T.) NO.4, JODHPUR & ORS.

Mr. BHUSHAN SINGH CHARAN, for the appellant / petitioner

Date of Order : 24.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this writ petition, the petitioner seeks to challenge the orders dt. 22.3.2007 & 26.3.2007, Annexure-8A & 10, respectively. By the order dt. 22.3.2007 cost of Rs. 500/- has been imposed on the defendant petitioner, while granting opportunity to lead evidence; while by the order dt. 26.3.2007 the learned trial court has declined the petitioner, for putting the documents, marked in the plaintiff's affidavit as Ex. 8 to 135, in part-D. It has been held, that the issues were framed on 26.9.2005, and on 23.1.2006 affidavit of Mahesh Kumar was filed on behalf of the plaintiff, but then the petitioner did not cross-examine him, and adjournments were given on cost, and thereafter, the application was filed under O. 11 Rule 12 and 14, which was dismissed on 20.1.2007, and now the present application has been filed. It has been observed, that the documents are copies of computerized bills, and it

is not the case of the defendant, that they are forged, and therefore, if they are marked exhibit, it will have no adverse effect on the defendant. Then it has been observed, that despite giving sufficient opportunity the petitioner has not cross-examined the plaintiff, and the application has been filed merely to delay the proceedings. Therefore, while dismissing the application, last opportunity was given to the petitioner to cross-examine the plaintiff, subject to payment of Rs. 1,000/- as cost.

In my view, so far admissibility of documents marked in the affidavit Ex. 8 to 135 are concerned, that shall be examined by the trial court at the time of final decision of the case. However, the petitioner can very well cross-examine the plaintiff, even on these documents, on all relevant aspects, as the petitioner thinks proper, and there is no occasion for putting these documents in part-D as prayed.

So far as imposition of cost is concerned, in my view, may be that order imposing the cost may not be happily worded, and the cost has been imposed for adjournment, but then it clearly appears, that looking to the overall conduct of the petitioner, in delaying the matter, by making applications after applications, the learned trial court has rightly imposed the cost.

Coming to the order Annex.8-A, it was contended that the petitioner did not ask for adjournment, and as such there was no occasion for imposing the cost thereby. In my view, the recitals of the order are to be taken on the face value, as repeatedly held by Hon'ble the Apex Court, and if the petitioner feels that the recitals are wrong, the only remedy was to file a review petition before that court itself, which, admittedly has not been filed. As such the order Annex. 8-A also cannot be interfered with.

Thus, I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/sushil/